

§ 1.642(h)-4

(3) A surviving spouse receiving a fractional share of an estate in fee under a statutory right of election, to the extent that the loss or deductions are taken into account in determining the share. However, the phrase does not include a recipient of dower or curtesy, or any income beneficiary of the estate or trust from which the loss or excess deduction is carried over.

(d) The principles discussed in paragraph (c) of this section are equally applicable to trust beneficiaries. A remainderman who receives all or a fractional share of the property of a trust as a result of the final termination of the trust is a beneficiary succeeding to the property of the trust. For example, if property is transferred to pay the income to A for life and then to pay \$10,000 to B and distribute the balance of the trust corpus to C, C and not B is considered to be the succeeding beneficiary except to the extent that the trust corpus is insufficient to pay B \$10,000.

§ 1.642(h)-4 Allocation.

The carryovers and excess deductions to which section 642(h) applies are allocated among the beneficiaries succeeding to the property of an estate or trust (see § 1.642(h)-3) proportionately according to the share of each in the burden of the loss or deductions. A person who qualified as a beneficiary succeeding to the property of an estate or trust with respect to one amount and does not qualify with respect to another amount is a beneficiary succeeding to the property of the estate or trust as to the amount with respect to which he qualifies. The application of this section may be illustrated by the following example:

Example. A decedent's will leaves \$100,000 to A, and the residue of his estate equally to B and C. His estate is sufficient to pay only \$90,000 to A, and nothing to B and C. There is an excess of deductions over gross income for the last taxable year of the estate or trust of \$5,000, and a capital loss carryover of \$15,000, to both of which section 642(h) applies. A is a beneficiary succeeding to the property of the estate to the extent of \$10,000, and since the total of the excess of deductions and the loss carryover is \$20,000, A is entitled to the benefit of one half of each item, and the remaining half is divided equally between B and C.

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§ 1.642(h)-5 Example.

The application of section 642(h) may be illustrated by the following example:

Example. (a) A decedent dies January 31, 1954, leaving a will which provides for distributing all her estate equally to A and an existing trust for B. The period of administration of the estate terminates on December 31, 1954, at which time all the property of the estate is distributed to A and the trust. A reports his income for tax purposes on a calendar year basis, and the trust reports its income on the basis of a fiscal year ending August 31. During the period of the administration, the estate has the following items of income and deductions:

Taxable interest	\$2,500
Business income	3,000
Total	5,500
Business expenses (including administrative expense allocable to business income)	5,000
Administrative expenses and corpus commissions not allocable to business income	9,800
Total deductions	14,800

It also has a capital loss of \$5,000.

(b) Under section 642(h)(1), an unused net operating loss carryover of the estate on termination of \$2,000 will be allowable to: A to the extent of \$1,000 for his taxable year 1954 and the next four taxable years in accordance with section 172; and to the trust to the extent of \$1,000 for its taxable year ending August 31, 1955, and its next four taxable years. The amount of the net operating loss carryover is computed as follows:

Deductions of estate for 1954	\$14,800
Less adjustment under section 172(d)(4) (deductions not attributable to a trade or business (\$9,800) allowable only to extent of gross income not derived from such trade or business (\$2,500))	7,300
Deductions as adjusted	7,500
Gross income of estate for 1954 ..	5,500
Net operating loss of estate for 1954	2,000
(No deduction for capital loss of \$5,000 under section 172(d)(2))	

Neither A nor the trust will be allowed to carry back any part of the net operating loss made available to them under section 642(h)(1).

(c) Under section 642(h)(2), excess deductions of the estate of \$7,300 will be allowed as a deduction to A to the extent of \$3,650 for